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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

In re ANDREW B., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW B.,

Defendant and Appellant.

C060217

(Super. Ct. No.
PDL20070072)

Following a contested jurisdictional hearing, the minor, Andrew B., was found to have committed vandalism resulting in damage of over \$400. (Pen. Code, § 594, subd. (b)(1).) The minor was placed on probation. He was also held jointly and severally liable for victim restitution with his co-participant, Danny. The minor appeals contending the trial court abused its discretion in finding the minor understood the wrongfulness of his conduct. The minor also contends he should not be held

jointly and severally liable for the full amount of victim restitution. We shall affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On the last weekend in January 2007, the minor, Danny S., Samantha J. and her younger brother, Kenny J. all lived in the same apartment complex. The minor was 11 years old, Danny was 10, Samantha was 13.¹ Late that afternoon, Samantha, Kenny and Danny were bored so they went to a construction site near their complex. Samantha began throwing rocks and breaking windows on the tractors. She broke about 15 to 20 windows. Samantha saw Kenny throw some rocks as well, but he did not hit the tractor. Samantha did not see Danny throw any rocks, but Kenny saw him throw rocks at the tractor windows. At trial, Kenny denied that the minor was with them, but when interviewed by police he told them that Danny, Samantha and the minor had all thrown rocks and Samantha and the minor had broken tractor windows. Samantha also threw a rock at a blue water truck and broke a window. She was not paying attention to Kenny and Danny the entire time they were at the site.

Samantha took a can of orange spray paint out of one of the tractors and spray painted a tractor and a few cars. Kenny told officers that the minor had also spray painted cars. In his interview with law enforcement, Kenny also stated that at some

¹ Kenny and Samantha both testified under grants of immunity. Their cases were dismissed.

point he and his sister had separated from Danny and the minor. At that time, the minor and Danny spray painted vehicles.

The next day, the minor, Kenny and Danny returned to the construction site. Danny and the minor threw more rocks and broke more windows. There was spray paint on a tractor. Kenny told the officer that Danny and the minor had spray painted the vehicles.

On January 29, 2007, Ben Borba, who worked for Veerkamp Construction, arrived at the construction site. He noticed broken windows and paint on the side of a water truck and other equipment. There were spray paint cans and a fire extinguisher on the ground. "[E]very piece of equipment on-site had at least one broken window."

Justin Stavey, another Veerkamp Construction employee, posted fliers offering a reward for information about the vandalism at the site. In response, he was given four names with apartment numbers. The names were the minor, Samantha, Kenny and Danny. He turned the information over to law enforcement.

Deputy Wycinski interviewed the minors. The minor seemed to understand his questions, did not appear confused and gave clear answers. The minor claimed he had only thrown "dirt clods at tractor tires." He said he returned to the site later to get his shoes and he found they had been spray painted orange. He found the spray paint can at the site and he and Kenny spray painted the ground. The minor claimed he had taken off his

shoes "because he and his friend were hiding from cars and he felt he could run faster without his shoes on."

Deputy Wycinski also interviewed Danny. Danny appeared to understand the questions and gave clear and direct answers. He admitted breaking two windows at the construction site and said that others had broken windows as well.

A Welfare and Institutions Code section 602 petition was filed alleging the minor had violated Penal Code section 594, subdivision (b)(1), causing more than \$10,000 in damages.² The petition was later amended to allege damage exceeding \$400. Following a contested jurisdictional hearing, the court found the allegations of the petition true beyond a reasonable doubt. The court also found the minor was not present at the construction site on the first day. The court determined the offense was a felony, with a maximum confinement period of three years.

The court then conducted a contested restitution hearing. The court ordered the minor and his parents to pay restitution to Veerkamp Construction in the amount of \$8,020.28, "to be paid joint and several" with Danny and his parents. A few weeks later, the court amended the restitution order, ordering the minor and Danny and their parents "to pay, jointly and severally, \$7,399.42."

² Further undesignated statutory references are to the Welfare and Institutions Code.

DISCUSSION

I

Defendant contends the trial court abused its discretion in determining that the prosecution had met its burden of proof under Penal Code section 26, to establish the minor knew the wrongfulness of his act. We disagree.

When a child under the age of 14 years is charged with a criminal offense, the prosecution must prove by clear and convincing evidence that the child understood the wrongfulness of his or her conduct. (*In re Manuel L.* (1994) 7 Cal.4th 229, 232, 239.) Under Penal Code section 26, there is a "presumption that a minor under the age of 14 is incapable of committing a crime." (*In re Manuel L., supra*, at p. 231; Pen. Code, § 26, subd. One.) To overcome the presumption, the People must show by "clear proof", meaning clear and convincing evidence, that at the time the minor committed the charged act, he or she knew of its wrongfulness. (*In re Marven C.* (1995) 33 Cal.App.4th 482, 486.) The minor's knowledge of the wrongfulness of his or her conduct must often be shown by circumstantial evidence. (*In re Tony C.* (1978) 21 Cal.3d 888, 900.) Pertinent considerations include the minor's age, experience, conduct, knowledge, understanding, and the attendant circumstances of the crime, such as its preparation, the particular method of its commission, and circumstances demonstrating a consciousness of guilt, such as flight, concealment, or false statements regarding the offense. (*Ibid.*; *People v. Lewis* (2001) 26 Cal.4th 334, 378-379.)

On appeal, we review the whole record in the light most favorable to the juvenile court's wardship order to determine whether substantial evidence supports the court's finding. (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 297-298.) We also presume in support of the juvenile court's finding the existence of every fact the court could reasonably deduce from the evidence and make all reasonable inferences that support the finding. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1089.) Where substantial evidence supports the finding, we must affirm, even though the evidence would also reasonably support a contrary finding. (*People v. Towler* (1982) 31 Cal.3d 105, 118.)

Here, defendant was 11 years old at the time of the offense. This is considerably younger than 14 years old. However, he was not so young as to be inherently incapable of understanding vandalism, specifically in the form of throwing rocks at windows and breaking them, is wrongful. This kind of vandalism is not an act that requires advanced years or mental sophistication to appreciate its wrongfulness. During his interview with Deputy Wycinski the minor seemed to understand the questions, did not appear confused and gave clear responses. The minor also indicated he understood his *Miranda* rights and agreed to speak with Deputy Wycinski. These are factors tending to show the minor's capacity to understand. (*In re James B.* (2003) 109 Cal.App.4th 862, 873.) In addition, there is minor's conduct indicating his consciousness of guilt. The minor hid from cars and took off his shoes so he could run faster. This supports the conclusion he did not want to be seen by passing

cars and was preparing to flee if seen. The minor also sought to minimize his conduct, claiming he had only thrown dirt clods at tires and spray painted the ground. (See *People v. Lewis*, *supra*, 26 Cal.4th at p. 379; *In re Cindy E.* (1978) 83 Cal.App.3d 393, 400.) Based on the record, there was substantial evidence supporting the finding that the minor understood the wrongfulness of his conduct.

II

The minor next contends the court abused its discretion holding him jointly and severally liable for the full amount of victim restitution along with Danny. The minor is not contesting the method by which the court calculated the total damages or whether he had the same state of mind as his co-participants. He rests this argument on the claim that he is being "charged for acts of vandalism and their damages which occurred while he was not even at the scene[.]" We are not persuaded.

Under section 730, subdivision (b), the juvenile court has broad discretion to impose terms and conditions of probation to achieve justice and enhance the reformation and rehabilitation of the juvenile. The minor's inability to pay is not relevant (§ 730.6, subd. (c)) and the restitution order must be in an amount to fully reimburse the victims for all economic losses incurred "as the result of the minor's conduct for which the minor was found to be a person described in Section 602[.]" (§ 730.6, subd. (h).)

When a court imposes restitution as a condition of probation in an adult case, it acts within its discretion if the restitution order is reasonably related to the crime the defendant was found to have committed or to the risk of future criminality. (See *People v. Baumann* (1985) 176 Cal.App.3d 67, 77.) A court's discretion to impose conditions of probation in a juvenile case is even greater. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81.) "[T]he court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation." (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391-1392, fn. omitted.)

Restitution is not limited to losses directly caused by the minor; it may include losses caused by conduct the minor partially participated in or conduct the minor aided and abetted. (*In re S.S.* (1995) 37 Cal.App.4th 543, 550; see also *People v. Arnold* (1994) 27 Cal.App.4th 1096, 1097-1098, 1100.) The juvenile court is vested with discretion to allocate responsibility for restitution in a manner that will effectuate the legislative objectives of making the victim whole, rehabilitating the minor, and deterring future delinquent behavior. (*In re S.S., supra*, 37 Cal.App.4th at pp. 549-550; *In re Brittany L., supra*, 99 Cal.App.4th at p. 1387.) "That a defendant was not personally or immediately responsible for the victim's loss does not render an order of restitution improper. . . . [T]he question simply is whether the order is reasonably related to the crime of which the defendant was

convicted or to future criminality." (*In re I.M.* (2005) 125 Cal.App.4th 1195, 1209; see *People v. Carbajal* (1995) 10 Cal.4th 1114, 1123-1124.)

A minor may be held jointly and severally liable with coparticipants for the victims' entire loss caused by an offense. (*In re S.S.*, *supra*, 37 Cal.App.4th at p. 550.) A joint and several restitution order "means that the defendant (or juvenile) is responsible to make restitution for the full amount of the victim's losses, but that the defendant's obligation shall be reduced by any payments to the victim by other wrongdoers." (*Ibid.*) Restitution may help a minor understand that he has harmed others and that he has a responsibility to make them whole. Properly imposed restitution serves the "salutary purpose" of making the criminal understand that he has harmed not only society, but individual human beings--and that he has a responsibility to make the victim whole. (*Ibid.*; see also *People v. Madrana* (1997) 55 Cal.App.4th 1044, 1048.) Such a purpose "would be directly undermined by a rule that each participant in a criminal scheme may be held responsible only for a portion of the overall harm." (*In re S.S.*, *supra*, 37 Cal.App.4th at p. 550.) We review a restitution order for an abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.)

We see no reason for this principle not to be extended here. There is no doubt that the victim, Veerkamp Construction, suffered substantial economic loss from the minor's criminal conduct and was entitled to restitution directly from him.

(§ 730.6, subd. (a)(1).) The minor and his friends broke a number of windows on the tractors.

The restitution order and allocation of responsibility had a rational and factual base. (*In re Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132.) Apportioning out the cost of repairing only the windows the minor was responsible for breaking would have been difficult and would not make the victim whole. Nor would apportionment for a small amount of the damage have served the "salutary purpose" of teaching appellant that damaging someone else's property can be "very, very, expensive." (*People v. Zito* (1992) 8 Cal.App.4th 736, 744.)

Finally, although the minor may not have been the only person who vandalized the construction site, he was a major participant in the vandalism and was therefore jointly and severally liable for the result. (*People v. Campbell* (1994) 21 Cal.App.4th 825, 834.) The minor's reliance on *Maxwell C.* (1984) 159 Cal.App.3d 263 is unavailing. In *Maxwell C.*, the minor was ordered to pay restitution for losses that occurred as a result of criminal conduct for which he was not charged, did not admit and was not found true. (*Maxwell C.*, *supra*, 21 Cal.App.4th at p. 265.) The *Maxwell C.* court noted, restitution must be directly related to crime charged and must relate to acts by accused which were committed with same state of mind as offense of which he was convicted, in order that statutory rehabilitative effect can take place. (*Ibid.*)

Here, the restitution order was directly related to the vandalism the minor was charged with, specifically breaking the

windows on the tractor. "[I]n ordering restitution as a condition of probation the court 'is not limited to the transactions or amounts of which defendant is actually convicted.' [Citation.] 'Thus, "restitution, as a valid condition of probation, need not be limited to the direct consequences of the criminal acts of which a defendant is actually convicted." [Citation.]' [Citation.]" (*People v. Vournazos* (1988) 198 Cal.App.3d 948, 956.) There is a sufficient connection between the crime for which the minor was adjudicated and the losses suffered by Veerkamp Construction. There was a rational basis for this restitution order, it is consistent with the purpose of rehabilitation and is reasonably related to the crime for which the minor was adjudicated or future criminality. As such, there is no abuse of discretion.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

CANTIL-SAKAUYE, J.